IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1378 OF 2006

Abdul Salam Abdul Rauf @ Savla .. Petitioner
Versus
State of Maharashtra & Anr. .. Respondents

Mrs.S.A.Dhamale for petitioner
Mr.M.M.Deshmukh, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 8th June 2007.

P.C.

. By this petition under Article 226 and 227 of the Constitution of India read with Section 482 Cr.P.C., the petitioner challenges order of externment dated 5th September 2005 passed by respondent No.2 and the order of Respondent No.4 (Appellate Authority) dated 26th May 2006. Petitioner, under the order of externment was directed to remove himself from Nashik Dist. for a period of two years. The

order of externment is dated 5th September 2005 and was subject matter of an Appeal before the Appellate Authority. The appellate authority has confirmed the same and that is how the petitioner is before this Court.

2. Mrs.Dhamale, learned Counsel appearing for petitioner has invited my attention to the show cause notice, a copy of which is at Annexure A. In her submission, the notice narrates the cases which are pending against the petitioner in various police stations. However, the same is completely silent with regard to any statement recorded in-camera and no reference in that behalf is made in the show cause notice. However, in the order of externing authority, it is recorded that the petitioner is moving around with weapon within the jurisdiction of the concerned police station along with his associates. He is in the habit of quarelling and entering into heated exchange with the residents.

Further, the Sub-inspector of police attached to Killa Police Station, Malegaon has recorded three in-camera statements and in para 2 of the order passed by the externment authority (internal page 4) the same have been specifically referred to and relied upon. She submits that once this material is not referred to nor mentioned in show cause notice and the petitioner had no idea of the same being on the record of the externment authority, it could not have been relied upon to extern the petitioner from the subject locality. She submits that no material which is extraneous and not set out in the show cause notice can be relied upon. This is part and parcel of the principles of natural justice. On this short ground alone the impugned orders deserve to be set aside.

3. Learned A.P.P. Mrs.Deshmukh on the other hand submits that the petitioner is involved in nearly 10 cases. They are serious in nature. He

is habitual offender who has been moving around in the area and threatening people. In such circumstances, the orders under challenge do not suffer from any infirmity and the petition deserves to be dismissed.

4. Since a very short point is raised before me, it is not necessary to refer to the facts in great details. With the assistance of learned Advocates for both sides, I have perused the show cause notice. The notice sets out the cases after stating that the petitioner is permanent resident of Malegaon. He is alleged to be moving around Malegaon threatening people. It is also alleged that the petitioner is instigating the Muslim community against Hindus. It is alleged that nobody comes forward to lodge any complaint against him and nobody comes forward to depose and give evidence. Thereafter, the cases with their details have been set out and in each one of them, the name of complainant is specifically

mentioned. Thus, there is complete non application of mind on the part of the authorities, inasmuch as, assuming that there is an allegation that none comes forward to complain and depose so also give evidence against the petitioner, yet, the show cause notice itself sets out all details with the names of complainants. Therefore, the externing authority as well as appellate authority have failed to apply their mind to the allegations in the show cause notice, based upon which the petitioner was sought to be externed.

5. Both sides do not dispute that in the notice there is no reference to any in-camera statements recorded by the concerned police station. In such circumstances, the externing authority in final order could not have relied upon the material which is extraneous and not forming part of the notice. Petitioner had no opportunity to meet the allegations or the

contents of the so called in-camera statements as he was completely taken by surprise. He was prejudiced inasmuch as neither these statements are forming part of show cause notice nor the impugned order discloses that during the course of proceedings, they were brought to his notice or copies were made available to him otherwise. In such circumstances, reliance placed upon this material has clearly vitiated the impugned orders. That apart, the orders under challenge are vitiated by total non application of mind inasmuch as Mrs.Dhamale states that out of 10 cases which are forming part of the show cause notice, the petitioner has been acquitted in six of them. In such circumstances, the petition deserves to succeed on the short ground which has been urged by the petitioner at page 9(J) of the petition.

. As a result of the undisputed factual position noticed above. Rule is made absolute in

terms of prayer (b). All concerned to act on an authenticated copy of this order.

(S.C.Dharmadhikari, J)